



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 30, 1995

Ms. Christine T. Rodriguez  
Staff Attorney  
Legal and Compliance Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR95-1325

Dear Ms. Rodriguez:

You seek reconsideration of Open Records Letter No. 95-490 (1995), in which this office stated that the one document submitted to this office in connection with your request could not be withheld from disclosure under section 552.111 of the Government Code and that this office could not determine whether any other requested documents are excepted from required public disclosure under the Texas Open Records Act, Government Code chapter 552, because no other documents were submitted to this office for review. We have assigned your request for reconsideration ID# 34700.

The Department of Insurance (the "department") received a request for various information concerning the department's Bulletin #B-0002-95. You sought to withhold the requested information under section 552.111 of the Government Code. We concluded in Open Records Letter No. 95-490 (1995) that the one submitted document could not be withheld under section 552.111 because it contained only facts. We also concluded that due to the department's failure to submit to this office for review at least representative samples of the other requested documents, we could not determine whether that information was excepted from disclosure under section 552.111 of the Government Code. It appears that, due to an error made when the documents were submitted to this office, the documents the department submitted in connection with this request had been switched with documents related to another request. The documents were otherwise timely submitted to this office for review. As you have now submitted representative samples, we will consider the exception you raise in connection with these sample documents.

You claim that section 552.111 of the Government Code excepts portions of the requested information from disclosure. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. The submitted documents reflect the policymaking processes of the governmental body. However, they contain both facts and advice, opinion, or recommendation. We have marked those portions of the documents that may be withheld from required public disclosure under section 552.111. The remaining information is factual and must be released.<sup>1</sup>

Section 552.111 also excepts from required public disclosure a preliminary draft of a letter or document related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990). You have informed us that you provided a copy of the final version of the bulletin to the requestor. We have reviewed the sample draft documents at issue and conclude that they relate to the policymaking processes of the governmental body. Therefore, the draft documents may be withheld from disclosure.<sup>2</sup>

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

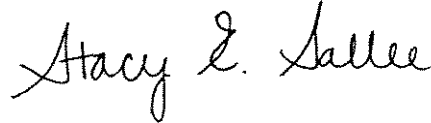
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<sup>1</sup>As with the February 21, 1995, agenda originally submitted by the department that actually relates to another request, the February 28, 1995, agenda submitted in connection with this request contains only facts and may not be withheld under section 552.111.

<sup>2</sup>We note that one document that is labeled as a "redraft" appears to be a cover memorandum for a redraft of the commissioner's bulletin. That cover memorandum is not itself a draft, nor does it contain advice, opinion, or recommendation. Therefore, this memorandum may not be withheld from required public disclosure under section 552.111 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Stacy E. Sallee".

Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/RHS/rho

Ref.: ID# 34700

Enclosures: Marked documents

cc: Mr. Jim Boyle  
Law Officers of Jim Boyle  
1005 Congress, Suite 550  
Austin, Texas 78701  
(w/o enclosures)